IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2832 OF 2005

Ashok Kumar Bagla. .. Petitioner.

vs.

Senior Inspector Malad

Police Station & Ors. .. Respondents.

Mr. Shirish Gupte i/by M/s. Sunil & Co.

for the petitioner.

Mrs. S.D. Shinde, APP., for Respondents.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 14th September, 2006.

P.C.

. In the affidavit filed by PSI Mulund Police Station it has been stated that charge sheet in the case came to be filed before the Addl. Chief Metropolitan Magistrate, 24th Court Borivali on 28.6.2005 and the next date was 2.3.2006 and on 8.9.2006 summons were issued to the accused for the first time and now the next date for return of summons is on 6.12.2006.

2. We find that the Investigating officer has

failed to give intimation to the accused persons when charge sheet was being filed. We are also unable to understand as to why the Court of Metropolitan Magistrate, 24th Court, Borivali accepted the charge sheet without the accused being produced before him.

3. Admittedly, in this case, accused was on bail. It was obligatory on the part of the Investigating Officer to inform him when charge sheet in the matter is being filed before the Court and whenever charge sheet is filed the Magistrate should satisfy itself that the accused is available and present before the Court in terms of the bail bond executed by him. It appears that for want of intimation the fault does not lie at the door of the accused but the Investigating Officer and the Magistrate in accepting the charge sheet without the accused and then resorting to the procedure of issuing summons. We, therefore, direct the State as well as the Chief Metropolitan Magistrate that in cases where the accused are on bail and charge sheets are filed, unless the accused is produced before the Court charge sheet should not be accepted and it is obligatory on the part of the Investigating Officers to give notice to the accused of the date and time when the charge sheet would be filed in the Court. The intimation to the accused that the charge sheet is being filed is also

necessary as on the date charge sheet is filed the accused is entitled to receive a copy of the charge sheet and to know the material on the basis of which he is being prosecuted so that he can prepare for his defence well in advance.

4. The Chief Metropolitan Magistrate is directed to circulate this order to all the Magistrates working under him in the City of Mumbai so that such lapse does not occur in future. This is so because it causes lot of inconvenience to the accused as accused may be prosecuting certain proceedings like the present one ignorant of the fact whether the charge sheet is filed or not.

5. In view of the fact that the charge sheet is now filed against the petitioner, it would be proper for the petitioner to contest the matter before the learned Magistrate as we are not inclined to interfere in the matter as already observed by us in our earlier order dated 7.9.2006.

6. Registrar (Judicial) to convey this order to the Chief Metropolitan Magistrate for compliance.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)